No. 78-1047

Supreme Court, U. S.
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In the Supreme Court of the United States

OCTOBER TERM, 1978

GEORGE T. HORVAT and CAROL R. HORVAT
JAMES J. MINESAL and JOYCE MINESAL,

Petitioners,

vs.

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

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PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

Petitioners, George T. Horvat, et al., Petitioners-Appellants, Pro Se, in the court below, pray that a Writ of Certiorari issue to review the Order of the United States Court of Appeals for the Seventh Circuit entered in this case.

Opinion and Order Below

The Order of the United States Court of Appeals for Seventh Circuit, dated June 7, 1978, is set forth in Appendix A and B. Rehearing was denied on July 17, 1978, and notice thereof is set forth in Appendix C.

Constitutional Provisions

United States Constitution, Article IV, Section 2, and Amendments I, V, IX, X, and XIV, Section 1.

Jurisdiction

The Court of Appeals entered its Order on June 7, 1978, (App. A and B). Petition for Rehearing, timely filed, was denied on July 17, 1978, (App. C). The jurisdiction of this Court is invoked under 28 U.S.C. 1254 (1) and rules 22.3 and 46 of the Rules of this Court.

Questions Presented

1. To bring the point at issue to the attention of the Court clearly and quickly, it will suffice to quote the Respondent-Appellee in Respondent's Brief In Answer to the United States Tax Court, at page 19;

> "The respondent does not challenge petitioners' constitutional right to create a trust. The respondent does not challenge this right nor the validity of the trust under state law. Although it is questionable whether an individual's life-time services can legitimately constitute the corpus of a trust, it is the effect of such an attempted transfer for federal purposes which is the issue."

2. Whether the lower courts have exercised their judicial responsibility adequately, to insure and safeguard Petitioners' rights under United States Constitution, Article IV, Section 2, and Articles of Amendment I, V, IX, X, and XIV, Section 1?

3. Whether United States Court of Appeals for the Seventh Circuit has so far departed from the accepted and usual course of judicial proceedings, or so far sanctioned such a departure by a lower court, as to call for an exercise of this Court's power of supervision?

Statement of the Case

On June 21, 1971, Petitioner George T. Horvat created the George T. Horvat Family Estate (A Trust). On September 21, 1971, Petitioner James J. Minesal created the James J. Minesal Family Estate (A Trust). The Petitioners "capitalized" their individual, business entities (their trusts) with their personal property, similar to and synonymous with countless thousands of other Sovereign Citizens who "capitalized" their service corporations with their personal property, e.g., their labor.

Timely and complete tax returns were filed by Petitioners and processed by Respondent in a normal manner beginning with returns for calendar year 1971.

On April 14, 1975, by statutory notice sent to Petitioners, Respondent determined deficiencies in income tax for taxable years 1971 and 1972 in the amounts of $372.00 and $1292.58, respectively for Petitioner Horvat, and in amounts of $77.86 and $931.29, respectively for Petitioner Minesal.

Subsequently, Petitioners filed their petitions with United States Tax Court in a timely fashion and their consolidated cases came before the Court on June 24, 1976. The briefing schedule was completed on January 20, 1977.

On April 11, 1977, United States Tax Court sustained the Respondent's determination of deficiencies and said;

> "The sole issue for our decision is whether the purported conveyances by Petitioners George T. Horvat

and James J. Minesal of their lifetime services to their respective family trusts were effective to shift the tax burden on amounts paid as compensation for those services to the respective trusts."

In its Opinion, the Court concluded, in part, as follows:

"Petitioners herein have conceptually failed to perceive, albeit at time slight, between anticipatory assignment of income to some other entity and the performance of substantial services by an entity through its agents or employees. Petitioners' conveyance of the respective life-time services and the income earned through the performance of those services was simply an assignment of income and ineffective to shift the tax burden from petitioners to their family trusts."

On December 10, 1977, the briefing schedule in the United States Court of Appeals for the Seventh Circuit was completed.

On June 7, 1978, the Court issued its Order (Apps. A and B) sustaining the Respondent. And, its Order (App. C) denying Petitioners' Petition for Rehearing was issued July 17, 1978.

On this date, September 5, 1978, the Petitioners filed this action.

Pursuant to Rule 39; "If papers are filed in a form which is not clearly legible, the clerk will require that new copies be substituted, but the filing shall not thereby be deemed untimely".

REASONS FOR GRANTING THE WRIT

A.

THIS IS AN IMPORTANT CASE OF FIRST IMPRESSION, BECAUSE IT INVOLVES FOR THE FIRST TIME THE APPLICATION OF THE DOCTRINE OF EQUAL PROTECTION UNDER THE LAW IN THE SPECIFIC AREA OF THE INDIVIDUAL'S INALIENABLE RIGHT TO IMPLEMENT, UTILIZE AND EMPLOY HIS PERSONAL PROPERTY, NAMELY, HIS LABOR, e.g., HIS LIFE-TIME SERVICES.

The Seventh Circuit by its Order is attempting to severely restrict the mandatory breadth of this constitutionally guaranteed principal and precept.

Consequently, the issues presented by this Petition are novel and urgently require a decision by this Court to assure uniform, nationwide application of the safeguards contained in United States Constitution at Article IV, Section 2, paragraph 1.

B.

CONGRESS SHALL MAKE NO LAW . . . ABRIDGING THE RIGHT OF THE PEOPLE TO PETITION THE GOVERNMENT FOR A REDRESS OF GRIEVANCES.

The Petitioners, appearing Pro Se from the outset of these proceedings, repeatedly requested the courts below to take at least, judicial notice of the full record as submitted. Instead, they have denied the Petitioners the full and complete hearing and the open and neutral consideration of their case that normal procedures and the law man-

dates; as clearly reflected in a review of Appendices A, B, and C, hereto attached.

In order to further clarify the issues presented here, Petitioners respectfully attach hereto, as Appendix D, their petition for Rehearing to the Seventh Circuit.

C.

THE FUNDAMENTAL, CONSTITUTIONAL QUESTION THAT HAS SURFACED HERE CAN NOT BE MUTED OR EVADED. IN THE INTEREST OF JUSTICE AND FOR THE CONVENIENCE OF THIS COURT, THE DIE SHOULD BE CAST NOW.

As early as 1971, Members of Apocalypse, Ltd. initiated this "Good Faith Controversy" with the Executive Branch of government. They did so when Justice William O. Douglas admonished the Nation, that; "The people are the sovereigns. They can make it exactly the kind of country they want".

More recently, the past, Chief Financial Officer of the United States, William E. Simon, stated publicly as follows:

> "Two decades of ever burgeoning government now threaten the collapse of a great industrial civilization and this is finally coming home to the citizenry".
>
> "The American people are frightened — they know something is wrong. They see inflation rising at an ever increasing rate and they see their incomes eroding. They are looking for the answer, and I think the search is leading to a return to the principals that this country was founded on".

This "Horvat Case" is but the vanguard of a cavalcade of adjudication, that unless judiciously served now, will evolve into a torrent of court actions that will not be limited in scope to passive, judicial review.

Currently, Apocalypse Members have in excess of twenty cases scheduled for processing in United States Tax Court. They have four cases currently in the process of appeal at the state level in Wisconsin. They have a jury case in process in Federal Court for the Eastern District of Wisconsin.

The Apocalypse Membership is resolute in their contention, that the importance of the doctrines of equal protection and due process to both the vindication of their constitutionally guaranteed rights and the effective functioning of government, are as worthy of certiorari, as was the case in *Butz* v. *Economou et al.* in Writ No. 76-709.

The Petitioners herein certainly are not profiting from this exercise. The mental strain, effort and frustration endured could never be offset by the minimal, monetary stake in the balance. And there's the rub, for not many among us are prepared or willing to make the necessary sacrifice to save our system of government. The fault lies not with the Executive Branch as much as it falls on the Legislative Branch. We make this effort so that the Judicial Branch of government can assert itself, sustain the Constitution, and provide us all perhaps our last chance to save this Nation, the last beacon of hope and freedom in the world.

CONCLUSION

For all the above reasons, petitioners pray that this Honorable Court grant this Writ of Certiorari directed to the United States Court of Appeals for the Seventh Circuit in this case.

Respectfully submitted,

GEORGE T. HORVAT
For all the Petitioners, Pro Se
1319 South 102nd Street
West Allis, Wisconsin 53214

APPENDIX

APPENDIX A

Unpublished Per Curiam Order

UNITED STATES COURT OF APPEALS
For the Seventh Circuit
Chicago, Illinois 60604

June 7, 1978.

Before
Hon. Walter J. Cummings, Circuit Judge
Hon. Wilbur F. Pell, Jr., Circuit Judge
Hon. Harlington Wood, Jr., Circuit Judge

GEORGE T. HORVAT and CAROL R. HORVAT,
JAMES J. MINESAL and JOYCE MINESAL,
Petitioners-Appellants,

No. 77-1874 vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent-Appellee.

Appeal from the United States Tax Court

This cause came on to be heard on the transcript of the record from the United States Tax Court.

On consideration whereof, it is ordered and adjudged by this court that the decision of the United States Tax Court in this cause appealed from be, and the same is hereby, AFFIRMED, with costs, in accordance with the order of this court entered this date.

APPENDIX B

Unpublished Order Not To Be Cited Per Circuit Rule 35

UNITED STATES COURT OF APPEALS

For the Seventh Circuit
Chicago, Illinois 60604
Submitted May 16, 1978
June 7, 1978.

Before

Hon. Walter J. Cummings, Circuit Judge
Hon. Wilbur F. Pell, Jr., Circuit Judge
Hon. Harlington Wood, Jr., Circuit Judge

GEORGE T. HORVAT and CAROL R. HORVAT,
JAMES J. MINESAL and JOYCE MINESAL,
Petitioners-Appellants,

No. 77-1874 vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent-Appellee.

Appeal from the United States Tax Court

ORDER

George and Carol Horvat and James and Joyce Minesal appeal from the decision of the United States Tax Court upholding certain income tax deficiencies determined by the Commissioner. Briefly, the Horvats and Minesals created trusts to which they assigned "the exclusive use of my lifetime services and all resultant earned remunera-

tion." The Tax Court held that this conveyance was merely an anticipatory assignment of income and as such, under *Lucas* v. *Earl,* 281 U.S. 111 (1930), was income to them and should have been so reported. *In addition,* this court only recently held, in a case where payments were made by an employer indirectly to the educational institution attended by taxpayers' children, that one who earns income may not avoid taxation through anticipatory arrangements. *Armantrout* v. *Commissioner,* 570 F.2d 210 (7th Cir. 1978).

The well-reasoned memorandum opinion of the Tax Court sets forth the facts and the applicable law, *and, as well, responds to the arguments now made again to this court.* In view of this, the judgment of the Tax Court is affirmed and the opinion of that court is adopted by this court.

APPENDIX C

UNITED STATES COURT OF APPEALS
For the Seventh Circuit
Chicago, Illinois 60604

July 17, 1978.

Before

Hon. Walter J. Cummings, Circuit Judge
Hon. Wilbur F. Pell, Jr., Circuit Judge
Hon. Harlington Wood, Jr., Circuit Judge

GEORGE T. HORVAT and CAROL R. HORVAT, and
JAMES J. MINESAL and JOYCE MINESAL,
Petitioners-Appellants,

No. 77-1874 vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent-Appellee.

Appeal from the United States Tax Court

On consideration of the petition for rehearing and suggestion for rehearing *en banc* filed in the above-entitled cause by George T. Horvat, et al., petitioners-appellants, no judge in active service has requested a vote thereon, and all of the judges on the original panel have voted to deny a rehearing. Accordingly,

IT IS ORDERED that the aforesaid petition for rehearing be, and the same is hereby, DENIED.

APPENDIX D

IN THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

No. 77-1874

GEORGE T. HORVAT and CAROL R. HORVAT
JAMES J. MINESAL and JOYCE MINESAL,
Appellants

v.

COMMISSIONER OF INTERNAL REVENUE,
Appellee

ON APPEAL FROM THE DECISION OF THE
UNITED STATES TAX COURT

PETITION FOR REHEARING BY APPELLANTS

STATEMENT OF ISSUE

Whether the Appellants are entitled to a rehearing, consistent with Rule 35 of the Federal Rules of Appellate Procedure, because the proceeding involves a question of exceptional importance and because to deny a rehearing would be inconsistent with substantial law?

STATEMENT OF CASE AND ARGUMENT

The majority of the Court has apparently adopted the proposed findings and conclusions of the Tax Court, although such a stance is generally not viewed with favor

because of the need to protect the substantial rights of both parties.

The scope of review by the Court was to determine whether the Tax Court's decision was clearly erroneous in regard to inferences reflected in its fact findings or rested on unsound doctrine so far as legal rulings and the basics of Constitutional law and American Jurisprudence was concerned.

The majority of the Court stated in its Order, dated June 7, 1978, as follows:

> "The well reasoned memorandum opinion of the Tax Court sets forth the facts and applicable law, and, as well, responds to the arguments now made again to this Court."

The Appellants respectfully submit that the Tax Court's findings of fact and Opinion are laced with errors of law and abuse of discretion in concoction of its judgment, when the entire record of the case is examined including stipulations, all the exhibits and particularly the Appellants' chronological catalogue of legal authorities.

The Tax Court included in its Opinion only the facts that were convenient to support its Opinion and completely ignored facts that supported Appellants' contention and legal position.

Similarly, the Tax Court unilaterally and arbitrarily selected "applicable law" consonant with its desired result and opinion, completely ignoring Appellants' submitted, "applicable law", thus denying the taxpayers the full and complete hearing and the open and neutral consideration of their case that normal procedures and the law mandates.

SEE—Tax Court's Opinion at page 10, [Appellant's Brief, Exhibit "A"]. It reads as follows:—

> "While most of the authority cited by Petitioners is simply inapposite, . . ."

Appellants respectfully submit that this truncated averment fails to qualify as an "adequate response" to Appellants' legal arguments, as suggested in this Court's Order, **supra.**

At no point did the Tax Court specifically come to grips with the nexus of this case made up of the three, concomitant elements that Appellants re-emphasized to this Court in their Reply Brief at pages 5 and 6, namely;

(a) "The laborer has the same right to sell his labor, and to contract with reference thereto, as any other PROPERTY owner."

(b) "Right to Contract", as delineated in Section 254, Volume 6, Ruling Case Law.

(c) "Right to Contract as to Personal Services", as delineated in Section 255 of the same authority.

The Tax Court's decision based solely on its adopted premise of "an anticipatory assignment of income" is clearly erroneous and rests on unsound and unproven doctrine not to be found in the record of this case.

Appellants are most reluctant to run the risk of abusing the privilege afforded them by Rule 35 of the Federal Rules of Appellate Procedure by rearguing their case anew in this Petition for rehearing, and pray that the Court will not mis-construe our efforts but accept them in all good faith as submitted, in the interest of justice.

Appellants are aware that the eight Judges to whom this appeal is directed include Thomas E. Fairchild, Luther M. Swygert, Robert A. Sprecher, Philip W. Tone, William J. Bauer, Walter J. Cummings, Wilbur F. Pell, Jr., and Harlington Wood, Jr.

And the Appellants understand that it is within the Court's discretion, that a Judge is not required to enter

a formal vote on the Petition, even though an absolute majority of the eight Judges herein is necessary to grant the rehearing, here petitioned for.

The Appellants therefore pray that all eight Judges herein will find it fair and judicious to cast a vote either for or against, rather than two or more of their number abstaining from casting a vote. In all due respect, the Appellants' desire in this regard is consistent with Amendment I, U.S.C., e.g., "The right of the people to petition government for a redress of grievances".

In regards to "the exceptional importance" of this case, for easy reference and expediency, the Appellants include below;

(a) their Conclusion as contained in their Brief to this Court:—

> "If the Constitution of the United States and the Amendments thereto are still valid, then the Decision of the Court below in the instant case is erroneous and its Order is null and void and must be reversed and rescinded."

(b) their Summation as contained in their Reply Brief to this Court:—

> "The entire record conclusively shows that Appellants' property rights and their right to contract are held inviolate under the law and that they can not be impaired, either by direct legislation or administrative interpretation."

The corollary of Appellants' Conclusion and Summation certainly affirms that *ALL* those who labor, not just members of certain professions, are guaranteed equal treatment under the law; and that consequently, the decision in *United States* v. *Empey*, 406 F. 2d., 157 (1969) will be applied universally in order to bar any possible case of unconstitutional discrimination.

The Appellants have reviewed the deep and rich record of the eight, individual Judges' history and their dedication to the law. Their combined total of years of service, experience and honors attained is not only impressive, but it is overwhelming for we Pro Se litigants who must struggle to make an acceptable case before such a prodigious tribunal.

Nevertheless, we are confident that the Judges herein will base their decisions to vote for or against a rehearing En Banc in this case, on the contents, the sincerity and the veracity of Appellants' Petition, rather than their lack of legal training and/or standing in the legal community.

CONCLUSION

In the interests of Justice, a rehearing should be granted and the Order of the Tax Court reversed.

Respectfully submitted,

George T. Horvat, Pro Se
For all Appellants

Dated at West Allis, Wisconsin
June 21, 1978

CERTIFICATE OF SERVICE

It is hereby certified that service of this Petition has been made on M. Carr Ferguson, Assistant Attorney General—Tax Division, United States Department of Justice, on this 21st day of June, 1978, by mailing four copies thereof, in an envelope, with postage prepaid, properly addressed to him as follows:

M. Carr Ferguson
Assistant Attorney General—Tax Division
United States Department of Justice
Washington, D.C. 20530